BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TERRY L. BAALMANN Claimant)
VS.))) Docket No. 225,575
ZELLER CONSTRUCTION COMPANY, INC. Respondent)
AND)
KANSAS BUILDING INDUSTRY)
WORKERS COMPENSATION FUND)
Insurance Carrier)

<u>ORDER</u>

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on July 2, 1998.

ISSUES

The ALJ found that the relationship of the employer/employee did not exist on the date of the alleged accident. Claimant disputes that finding and contends he was either an employee or a statutory employee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

Whether one is an employee or an independent contractor is determined primarily by whether the alleged employer has the right to control the manner and methods by which claimant performs his or her duties. <u>Anderson v. Kinsley Sand & Gravel, Inc.</u>, 221 Kan. 191, 558 P.2d 146 (1976); <u>Evans v. Board of Education of Hays</u>, 178 Kan. 275, 284 P.2d 1068 (1955).

Other indications of an independent contractor relationship would include the furnishing of tools by the claimant and payment in a lump sum for completed performance. McCarty v. Great Bend Board of Education, 195 Kan. 310, 403 P.2d 956 (1965).

IT IS SO ORDERED.

In this case, claimant was to be paid \$4700 to build cabinets for a home being constructed by respondent. He was told that time was important and his work should be done by Memorial Day. Claimant furnished his own tools and performed the work in his own home. While the evidence does indicate some control by the respondent in the details, the control is not, in our view, inconsistent with an independent contractor relationship. The Board finds claimant was an independent contractor, not an employee.

The Board concludes claimant is not entitled to the status of a statutory employee under these circumstances. K.S.A. 1996 Supp. 44-503. Claimant's injury occurred while performing work at home. In addition, self-employed individuals are not considered employees for purposes of the statutory employee provisions. <u>Aetna Life & Cas. v. Americas Truckway Systems, Inc.</u>, 23 Kan. App. 2d 315, 929 P.2d 807 (1997).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on July 2, 1998, should be, and the same is hereby, affirmed.

Dated this	day of September 1998.
	BOARD MEMBER

c: Paul V. Dugan, Jr., Wichita, KS Jeffery R. Brewer, Wichita, KS Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director